

**Notice of Allowability**

Application No.

10/053,243

Examiner

Teresa E Strzelecka

Applicant(s)

GIOVANNONI ET AL.

Art Unit

1637

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed October 5, 2004.
2. ☒ The allowed claim(s) is/are 1-8, 11-21 and 23-33.
3. ☒ The drawings filed on 16 January 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

JEFFREY FREDMAN  
PRIMARY EXAMINER

### **DETAILED ACTION**

1. This application has been assigned to examiner Teresa Strzelecka in the Art Unit 1637.
2. This office action is in response to an amendment filed October 5, 2004. Claims 1-8, 11-21 and 23-30 were previously pending. Applicants amended claims 1 and 30 and added new claims 31-33. Claims 1-8, 11-21 and 23-33 are pending.
3. Applicants' amendments overcame the following: objection to claim 1; rejection of claims 1-8, 11-21 and 23-30 under 35 U.S.C. 112, first paragraph, written description; rejection of claims 1-8, 11-21 and 23-30 under 35 U.S.C. 112, first paragraph, enablement; rejection of claims 1-8, 11-21 and 23-30 under 35 U.S.C. 112, second paragraph; rejection of claims 1-8, 11-21 and 23-25 and 27-29 under 35 U.S.C. 103(a) over Jovanovich and Sosnowski et al.; rejection of claim 26 under 35 U.S.C. 103(a) over Jovanovich and Sosnowski et al. in view of Hoover et al. and rejection of claim 30 under 35 U.S.C. 103(a) over Jovanovich and Sosnowski et al. in view of Glockner et al. and Amann et al.

### ***Allowable Subject Matter***

4. The following is an examiner's statement of reasons for allowance: Applicants' invention is a method of isolating and identifying microbial species by culturing a diluted sample of the microorganisms gathered from environment in a microtiter plate using substrate concentrations similar to source environment, incubating the cultures to allow for growth of the microorganisms, detecting the growth of the microorganism by detecting an increase in the number of cells to no more than  $5 \times 10^4$  cells/milliliter, and identifying the microbial species by hybridization with a probe, amplification of a nucleic acid of the organism, immunodetection of a molecule of the microorganism or sequencing of nucleic acid from the microorganism. The closest prior art reference, Robertson et al. (Appl. Env. Microbiol., vol. 64, pp. 3900-3909, 1998; cited in the IDS),

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teaches determination of biomass of bacteria in solution at low cell densities using flow cytometry and light scattering, but does not teach growing cells in microtiter plates.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teresa E Strzelecka whose telephone number is (571) 272-0789. The examiner can normally be reached on M-F (8:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on (571) 272-0782. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TS  
January 14, 2005

  
JEFFREY FREDMAN  
PRIMARY EXAMINER  
1/14/05